

### 3. Environment Clearance – Environment

Supreme Court verdict recall on technical grounds, not endorsement of post-facto approvals. The Supreme Court reversed its earlier ban on retrospective (ex-post facto) environmental clearances, ruling that while prior approval is the norm, post-facto clearance can be granted in exceptional cases to protect public interest and massive economic investments. This judgment prioritizes pragmatic economic considerations over a rigid application of environmental laws, despite dissenting views citing the precautionary principle.

#### 1. Understanding Ex-Post Facto Environmental Clearance

**Definition** – It refers to the environmental approval granted to projects or activities that have already commenced or been completed without obtaining the mandatory prior Environmental Clearance (EC).

**Violation of Norms** – This practice bypasses the standard Environmental Impact Assessment (EIA) process, which requires assessment before any construction begins.

#### **Major Implications** –

1. It circumvents proper environmental scrutiny.
2. It can lead to irreversible environmental degradation and biodiversity loss.
3. It creates a fait accompli situation where the damage is already done before regulators assess it.

#### 2. Legal and Constitutional Framework

The environmental governance of India is rooted in the following frameworks, which generally mandate

#### **Prior Clearance** –

**Environment (Protection) Act, 1986** – The primary legislation enforcing environmental safety.

**EIA Notifications (1994 & 2006)** – These explicitly mandate that large projects must not initiate work until they have been assessed for environmental impact (Prior Environmental Clearance).

#### **Constitutional Provisions** –

**Article 21** – Guarantees the Right to Life, interpreted by courts to include the right to a clean and pollution-free environment.

**Article 51A(g)** – Imposes a fundamental duty on every citizen to protect and enhance the natural environment.

#### 3. Key Environmental Principles Involved

The debate revolves around the adherence to (or violation of) these core principles –

**Principle of Prior Approval** – Environmental impact must be assessed before the project starts to prevent damage.<sup>8</sup>

**Precautionary Principle** – Preventive action should be taken to avoid environmental harm before it occurs.

**Polluter Pays Principle** – Those who produce pollution should bear the costs of managing it to prevent damage to human health or the environment.<sup>9</sup>

**Public Trust Doctrine** – Natural resources are held in trust by the State for the benefit of the public.<sup>10</sup>

**Sustainable Development** – Economic development must be balanced with ecological stability.

#### 4. Historical Context & The Conflict

**Government Stance (2017)** – The Ministry of Environment, Forest and Climate Change (MoEFCC) issued a notification in 2017. It restricted ex-post facto clearances but allowed them in exceptional cases provided the project complied with environmental standards.

#### **Previous Judicial Trends**

**Common Cause (2017) & Alembic Pharmaceuticals (2020)** – The Supreme Court ruled that post-facto ECs were impermissible, reinforcing that clearances must be prospective (future-looking), not retrospective.

#### **The Vanashakti Case (May 2025 Order)**

**Ruling** – The Supreme Court declared post-facto ECs for illegal constructions as a "gross illegality" and an "anathema" to environmental law.

**Action** – The Court struck down the 2017 Notification and the 2021 Office Memorandum (OM) that facilitated such clearances.

**Reaction** – The Confederation of Real Estate Developers of India (CREDAI) and the Union Government filed review petitions.<sup>13</sup> They argued that striking down these permissions would lead to the demolition of projects worth thousands of crores, including public infrastructure.

## 5. The November 2025 Review Judgment

The Supreme Court bench was divided in its opinion during the review. Below is the comparison of the Majority View (the ruling) and the Dissenting View.

| Feature                     | Majority View (Chief Justice B.R. Gavai)                                                                                                                                          | Dissenting View (Justice Ujjal Bhuyan)                                                                                |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
| <b>Core Stance</b>          | Allowed Reversal. Reversed the May 2025 order, effectively allowing post-facto ECs in specific cases.                                                                             | Opposed Reversal. Maintained that the May 2025 order was correct and should stand.                                    |
| <b>Primary Argument</b>     | Public Interest & Economy. Emphasized the devastating economic effects of demolishing completed projects, especially public infrastructure like hospitals and medical institutes. | Environmental Integrity. Accused the Court of "backtracking" on sound environmental jurisprudence to favor violators. |
| <b>View on Demolition</b>   | Questioned the utility of demolishing functional projects where considerable resources were already invested.                                                                     | Argued that allowing these projects creates a "false narrative" that environment and development are enemies.         |
| <b>Legal Interpretation</b> | Post-facto clearance should not be dismissed rigidly. It can be allowed as an exception, ensuring public interest is safeguarded.                                                 | Retrospective EC is incompatible with the Precautionary Principle and is a "detrimental and alien concept."           |
| <b>Conclusion</b>           | Pragmatic Approach – Post-facto ECs are not the "regular route" but an "exception" for high-investment/public interest cases.                                                     | Principled Approach – Ecology and development must align; post-facto clearance leads to irreparable degradation.      |

## 6. Implications of the Reversal

**Exception, Not the Rule** – The Court clarified that while ex-post facto ECs are reinstated, they remain an exception meant for specific, high-investment, or public interest cases, not a standard procedure.

**Balancing Act** – The ruling attempts to navigate the difficult balance between environmental preservation and economic development, suggesting that demolition is not always the sustainable answer for completed infrastructure.

**Risk of Moral Hazard** – Critics fear this may weaken the deterrent effect of environmental laws. Developers might initiate projects illegally, hoping to pay penalties and secure clearance later (regularization of illegality).

**Legal Precedent** – This judgment modifies the strict "Prior Approval" stance established in the Alembic Pharmaceuticals and Common Cause judgments, adding a layer of economic pragmatism to environmental jurisprudence.

Source – <https://indianexpress.com/article/legal-news/experts-supreme-court-verdict-recall-on-technical-grounds-not-endorsement-of-post-facto-approvals-10373373/lite/>